

ESTTA Tracking number: **ESTTA84712**Filing date: **06/09/2006**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Dell Inc.		
Entity	Corporation	Citizenship	Delaware
Address	One Dell Way Round Rock, TX 78682 UNITED STATES		

Correspondence information	Doreen L. Costa Attorney for Petitioner Baker Botts L.L.P. 30 Rockefeller Plaza 44th Floor New York, NY 10112-4498 UNITED STATES nytmdpt@bakerbotts.com
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**Registration Subject to Cancellation**

Registration No	1424688	Registration date	01/13/1987
Registrant	XEROX CORPORATION  STAMFORD, CT 06904 UNITED STATES		
Goods/Services Subject to Cancellation	Class 009. First Use: 1985/12/00 , First Use In Commerce: 1985/12/00 Goods/Services: COMPUTER SYSTEM COMPRISING COMPUTER PROGAMS, TERMINALS, COMPUTERS AND PRINTERS		
Grounds for Cancellation	The registered mark has been abandoned.		

Attachments	Petition for Cancellation.pdf ( 3 pages )(154133 bytes )
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Signature	/Doreen L. Costa/
Name	Doreen L. Costa
Date	06/09/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 1,424,688, XPS  
Registered on January 13, 1987

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DELL INC.	:	
	:	
Petitioner,	:	
	:	Cancellation No. _____
vs.	:	
	:	
XEROX CORPORATION,	:	
	:	
Respondent.	:	
-----X		

**PETITION FOR CANCELLATION**

Petitioner, Dell Inc., a Delaware corporation, having a place of business at One Dell Way, Round Rock, Texas 78682, believes that it will be damaged by Registration No. 1,424,688 for the mark XPS in international class 9 covering "computer system comprising computer programs, terminals, computers and printers" purportedly owned by Respondent, Xerox Corporation (hereinafter "Respondent"), a New York corporation, having a place of business in Stamford, Connecticut, and hereby petitions to cancel this registration.

As grounds for cancellation, Petitioner alleges the following:

1. Petitioner, Dell Inc., through its predecessors in interest and title, and through its related companies and licensees (hereinafter individually and/or collectively referred to as "Petitioner" or "Dell"), designs, builds and customizes computer products and accessories, including personal computers, laptop, notebook computers, and other electronic products. Dell also sells a wide selection of computer peripheral hardware and computing software and provides an extensive array of

computer-related services, including telephone and on-line technical support, on-site product service, system installation and management, and technology transition planning and implementation. Since it commenced operations in 1984, Dell has established itself as a leading manufacturer and seller of computer systems, accessories, electronics and related products and services through direct marketing channels and in other ways customary in the trade.

2. Petitioner has used the mark XPS on and in connection with computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, mice, co-processors, modems, hard and floppy disk drives, tape drives, CD read/write drives, digital video read/write drives, optical read/write drives, data storage devices, and electronic or magnetic cards and memory add ons, memory boards and chips, cables and connectors, all for use with computers; computer operating and utility software in electronic form all sold together as a unit since at least as early as June 30, 1994. Petitioner's XPS mark is inherently distinctive and has been associated by the relevant public exclusively with Petitioner.

3. As a result of the long, extensive and continuous advertising, sale, use and promotion of products bearing Petitioner's mark, XPS, such mark has acquired substantial public and consumer recognition and secondary meaning throughout the United States, enjoys an extremely favorable reputation and substantial distinctiveness and goodwill, and has become an asset of considerable value to Petitioner.

4. On February 8, 2006, Petitioner filed Application Serial No. 78/809,631 to register its mark, XPS, for computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, CD read/write drives, digital video

read/write drives, optical read/write drives, data storage devices, and electronic or magnetic cards and memory add ons, memory boards and chips, cables and connectors, all for use with computers; computer operating and utility software in electronic form all sold together as a unit, claiming first use in interstate commerce at least as early as June 30, 1994.

5. On information and belief, on January 13, 1987, Registration No. 1,424,688 was issued to Respondent for the mark XPS in International Class 9 for "computer system comprising computer programs, terminals, computers and printers".

6. On information and belief, Respondent has ceased all use of the mark XPS in interstate commerce in connection with computer system comprising computer programs, terminals, computers and printers, with an intent not to resume use of the mark and, by its conduct, has abandoned any and all claims to maintain a registration of said mark, and has forfeited all claims of Federal trademark rights in and to said mark that may be afforded to it under the United States Federal Trademark Laws, 15 U.S.C. § et seq. As such, Registration No. 1,424,688 is subject to cancellation.

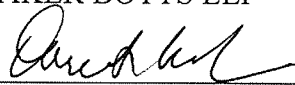
7. Unless Registration No. 1,424,688 for XPS is cancelled, Petitioner's pending application for the mark XPS will likely be refused and Petitioner will be damaged within the meaning of 15 U.S.C. §1064.

WHEREFORE, Petitioner prays the Registration No. 1,424,688 be canceled.

Respectfully submitted,

BAKER BOTTS LLP

Date: June 9, 2006

By:   
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